

Number: **200736004**
Release Date: 9/7/2007

Index Number: 355.01-01, 368.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:CORP:B06
PLR-107287-07

Date:
June 12, 2007

In Re:

Parent =

Distributing =

Controlled =

Target Holdco =

Sub 1 =

Sub 2 =

Business 1 =

Business 2 =

State A =

State B =

Date 1 =

Date 2 =

Date 3 =

a =

Certain Payments =

Dear :

This letter responds to your representative's letter dated February 8, 2007, requesting rulings on certain federal income tax consequences of completed and proposed transactions. Additional information was submitted in letters dated March 16, April 27, May 25, May 31, and June 11, 2007. The material information submitted for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (described below): (i) satisfied the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) was used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both

(see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); and (iii) an acquisition or acquisitions were part of a plan (or series of related transactions) pursuant to which one or more persons acquired directly or indirectly stock representing a 50-percent or greater interest in Distributing or Controlled (see § 355(e)(2)(A)(ii) and § 1.355-7).

Parent, a publicly traded corporation incorporated in State A, is the common parent of an affiliated group of corporations which file a consolidated federal income tax return, including Distributing and Sub 1. Sub 1 holds all of the outstanding interests in Sub 2, an entity disregarded as separate from its owner for U.S. Federal tax purposes under § 301.7701-3 of the Procedure and Administrative Regulations.

Prior to Date 1, Target Holdco was the common parent of an affiliated group of corporations, including Distributing, which filed a consolidated federal income tax return. Immediately prior to Date 1, Distributing had only a single class of common stock outstanding ("Distributing Common Stock"). Distributing was engaged in the active conduct of Business 1 and Business 2.

We have received financial information which indicated that Business 1 and Business 2 each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the five years prior to the distribution.

For what has been represented as valid business purposes, the following transactions have been partially consummated and proposed:

- (i) On Date 1, in a merger represented by the taxpayer as constituting a reorganization under § 368(a)(1)(A), Target Holdco merged with and into Parent, with Parent being the surviving corporation. Pursuant to this merger, the Target Holdco shareholders received Parent stock and cash in exchange for their Target Holdco stock and Parent became the owner of a% (greater than 80 percent) of Distributing Common Stock.
- (ii) On Date 2, Distributing formed Controlled, a State B limited liability company, and elected under § 301.7701-3(c) to have Controlled treated as a corporation for U.S. Federal tax purposes. Taxpayer has represented that this election was effective as of the effective time of the formation of Controlled.
- (iii) On Date 3, Distributing contributed the Business 1 assets to Controlled and Controlled assumed all of the liabilities associated with such assets (the "Contribution"). On Date 3, Controlled had only a single class of common stock outstanding ("Controlled Common Stock"), and Distributing directly owned all of the Controlled Common Stock.

- (iv) On Date 3, Distributing distributed all of the Controlled Common Stock to Parent in exchange for Distributing Common Stock of equal value (the "Distribution").
- (v) On Date 3, Controlled merged with and into Sub 1, with Sub 1 being the surviving corporation. Taxpayer has represented that this merger constituted a reorganization under § 368(a)(1)(A).
- (vi) On Date 3, Sub 1 contributed the Business 1 assets to Sub 2 and Sub 2 assumed all of the liabilities associated with such assets.
- (vii) Sub 1 will liquidate into Parent by an election of Sub 1 under § 301.7701-3(c) to be disregarded as an entity separate from its owner for U.S. Federal tax purposes.

Steps (i) through (vi) were completed by Date 3. After step (vi) Distributing was engaged in Business 2 and Sub 1 (as successor to Controlled) was engaged in Business 1.

The following representations have been made with respect to the Contribution and Distribution:

- (a) The fair market value of the Controlled Common Stock received by Parent approximately equaled the fair market value of the Distributing Common Stock surrendered by Parent in the exchange.
- (b) No part of the consideration distributed by Distributing in the Distribution was received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of Business 1 and Business 2 is representative of the operations of Business 1 and Business 2 at the time of the Distribution, and, with regard to such businesses, there were no substantial operational changes between the date of the last financial statements submitted and the date of the Distribution.
- (d) Following the Distribution, Distributing and Sub 1 (as Controlled's successor) have each continued the active conduct of its business, independently and with its separate employees.
- (e) The Distribution was carried out for the following corporate business purposes: (i) to resolve managerial, financial and other problems resulting from operating Business 1 and Business 2 within the same entity, and (ii)

to improve the overall competitive position of Business 1 by moving it out from the regulated Business 2 umbrella. The Distribution was motivated, in whole or substantial part, by one or more of these corporate business purposes.

- (f) The Distribution was not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (g) The total adjusted basis and fair market value of the assets transferred to Controlled by Distributing in connection with the Contribution equaled or exceeded the sum of the liabilities assumed (as determined under § 357(d)) by Controlled in the Contribution. The liabilities assumed (as determined under § 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and were associated with the assets being transferred.
- (h) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Distribution.
- (i) No intercorporate debt existed between Distributing and Controlled (or Sub 1, as Controlled's successor) at the time of, or subsequent to, the Distribution.
- (j) Immediately before the Distribution, items of income, gain, loss, deduction, and credit, if any, were taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and, as in effect at the time of the Distribution, § 1.1502-13 as published by T.D. 8597). Further, at the time of the Distribution, Distributing did not have an excess loss account in the Controlled Common Stock.
- (k) Except for Certain Payments, payments made in connection with all continuing transactions, if any, between Distributing and Controlled (or Sub 1, as Controlled's successor), have been for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (l) No two parties to the Distribution were, either at the time of the Distribution or at any other time before it or after it, investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (m) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) held stock possessing 50-percent or more of the total combined voting power of all classes of Distributing

Common Stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Distributing Common Stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

- (n) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) held stock possessing 50-percent or more of the total combined voting power of all classes of Controlled Common Stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled Common Stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing Common Stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (o) The Distribution was not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons acquired directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (p) Since Date 3, for all purposes, Parent has consistently treated the Distribution as having qualified under §§ 355 and 368(a)(1)(D), including for purposes of determining its basis in the stock of (i) Distributing, (ii) Controlled, and (iii) Sub 1, the successor to Controlled.
- (q) Parent has continuously owned (i) first directly and currently through an entity disregarded as separate from its owner for U.S. Federal tax purposes, a% of Distributing, as it did immediately after the Distribution and has not engaged in any distributions or dispositions of Distributing stock since the Distribution; (ii) all of the shares of Controlled from the time immediately after the Distribution through the time Controlled merged with and into Sub 1 in step (v), above; and (iii) all of the shares of Sub 1 outstanding immediately after step (v), above.
- (r) Distributing and Sub 1 have been members of the Parent consolidated group for all times since the Distribution.

Based solely on the information submitted and the representations made, we rule as follows on the Contribution and Distribution:

- (1) The Contribution, followed by the Distribution, was a reorganization under § 368(a)(1)(D). Distributing and Controlled were each a “party to a reorganization” within the meaning of § 368(b).
- (2) Distributing recognized no gain or loss on the Contribution (§§ 361(a) and 357(a)).
- (3) Controlled recognized no gain or loss on the Contribution (§ 1032(a)).
- (4) Controlled’s basis in each asset received in the Contribution equaled the basis of that asset in the hands of Distributing immediately prior to the transfer of such asset to Controlled (§ 362(b)).
- (5) Controlled’s holding period for each asset received in the Contribution included the period during which such asset was held by Distributing (§ 1223(2)).
- (6) Distributing recognized no gain or loss on the Distribution (§§ 361(c) and 355(e)(2)(C)).
- (7) Parent recognized no gain or loss (and was not otherwise required to include any amount in income) on the Distribution (§ 355(a)).
- (8) The aggregate basis of the Distributing Common Stock and Controlled Common Stock held by Parent immediately after the Distribution equaled the aggregate basis of the Distributing Common Stock held by Parent immediately before the Distribution, allocated in the manner described in § 1.358-2(a)(2) (§ 358(a)(1),(b) and (c)).
- (9) The holding period of the Controlled Common Stock received by Parent in the Distribution included the holding period of the Distributing Common Stock on which the Distribution was made, provided that the Distributing Common Stock was held as a capital asset on the date of the Distribution (§ 1223(1)).
- (10) Earnings and profits were allocated, if any, between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(f)(2).
- (11) Step (v) and step (vi) above will not adversely affect rulings issued regarding the Contribution and Distribution (rulings (1) through (10)).

No opinion is expressed about the tax treatment of the Contribution and Distribution under other provisions of the Code or regulations or the tax treatment of any

conditions existing at the time of, or effects resulting from, the Contribution and Distribution that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Distribution satisfied the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) whether the Distribution was used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B)) and § 1.355-2(d)); (iii) whether the Distribution and an acquisition or acquisitions were part of a plan (or series of related transactions) pursuant to which one or more persons acquired directly or indirectly stock representing a 50-percent or greater interest in Distributing or Controlled under § 355(e)(2)(A)(ii); (iv) whether step (i) and step (v) each qualified as a reorganization under § 368(a)(1)(A); and (v) the federal income tax consequences of Certain Payments made for other than fair market value.

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

Sincerely,

Mark J. Weiss
Assistant to the Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: